IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

COMPANY APPEAL (LODGING) NO.3 OF 2006
IN
COMPANY APPLICATION NO.170 OF 2003
AND
COMPANY APPLICATION NO.89 OF 2004
IN
COMPANY PETITION NO.73 OF 2000

1. Unmesh Kantilal Shah & ors. Appellants
vs.
1. M/s.Chemosyn Limited & anr. Respondents

Mr.Sunil Gupta, Sr. Counsel with Mr.H.C.Mehta i/b.M/s.Mehta & Co. for the appellants.

Mr.Sanjay Jain with Ms.Sandhya Jain i/b.Mr.Nivit Srivastava for respondents.

ALONG WITH
COMPANY APPEAL NO.31 OF 2005
IN
COMPANY APPLICATION NO.216 OF 2004
IN
COMPANY PETITION NO.73 OF 2000

ALONG WITH
COMPANY APPEAL NO.32 OF 2005
IN
COMPANY APPLICATION NO.217 OF 2004
IN
COMPANY PETITION NO.73 OF 2000

ALONG WITH
COMPANY APPEAL NO.33 OF 2005
IN
COMPANY APPLICATION NO.218 OF 2004
IN
COMPANY PETITION NO.73 OF 2000

ALONG WITH
COMPANY APPEAL NO.34 OF 2005
IN
COMPANY APPLICATION NO.219 OF 2004
IN
COMPANY PETITION NO.73 OF 2000

M/s.Chemosyn Limited & anr. Appellants

vs.

Shri Unmesh Kantilal Shah & ors. Respondents

Mr.Sanjay Jain with Ms.Sandhya Jain i/b.Mr.Nivit Srivastava for the appellants.

Mr.Sunil Gupta, Sr.Counsel with Mr.H.C.Mehta i/b.M/s.Mehta & Co. for the respondent Nos. 1 to 3.

Mr. Alok Bagla i/by M/s Bagla Dadewal & Co. for respondent No.4.

CORAM : ANOOP V. MOHTA,J.

DATE OF RESERVING THE JUDGMENT : 11th October, 2007

DATE OF PRONOUNCING THE JUDGMENT: 5th December, 2007.

JUDGMENT:

All these are appeals under Section 10-F of the Companies Act-1956. This common Judgment on following facts and circumstances.

2. As per Family Settlement Deed (FSD) dated 12/10/1999, Samir (M.D.) (66% shareholder) to buy the entire shareholding of Unmesh (33% shareholder) of a sum of Rs.6.5 crores in two phases of the various companiies between the parties. Rs.2.5 crores by 11.10.2000 resulting in the exit of Unmesh as a Joint MD, and Rs.4 crores by 11.10.01 resulting in his exit as Director.

3. Mr. K.H. Shah, the father of Samir and Unmesh, head of the family, founder promoter of the family

company (Chemosyn Ltd.), at the relevant time Chairman of the Company and mediator in the disputes between the parties bought the stamp paper for the FSD and also signed the DSD in token of his acceptance of the role of sole arbitrator in the event of "any dispute in this matter between the parties".

4. On 8.8.2000, Samir removed Unmesh from directorship without notice and in breach of provisions of the Company Act. The removal was also premature and in breach of the FSD. Samir also performed various other acts of mismanagement and oppression.

5. On 1.9.2000 Unmesh, his mother and Hanumant Holding Pvt.Ltd. (all as shareholders) filed the present C.P. No.73/2000 only against oppression and mismanagement, before the Company Law Board (CLB), making it clear (in C.A.No.166/2000) that for the breach of the FSD, they would go at the appropriate time to the appropriate forum i.e. Arbitration. On 28.9.2000 stay granted by CLB for holding A.G.M.

6. No first compliance of FSD, by Samir on due date i.e. 11.10.2000.

7. On 8.1.2001 Unmesh commenced arbitration for implementation of the FSD.

8. On 9.1.2001, Samir filed CA No.6/2000 before CLB demanding decision by CLB itself also on the arbitral disputes concerning the FSD and stay of arbitration.

9. On 10.1.2001, Unmesh filed CA No.12/2000 under Section 8 of the Arbitration and Conciliation Act, 1996 objecting to the same and requesting the CLB to refer all arbitral disputes, including the FSD dispute, only to arbitration.

10. On 18.1.2001, Unmesh even offered before CLB to change the arbitrator to a retired High Court Judge of Samir's choice at Bombay and Samir took time to respond.

11. On 2.2.2001, instead of changing the arbitrator in the FSD dispute, Samir offered before the CLB to purchase Unmesh's and his mother's share on the agreed valuation within a time frame, saying that it would put an end to the litigation.

12. On 12.2.2001, Unmesh and mother accepted the offer and the CLB directed to purchase the shares, leaving the parties to agree to a time frame.

13. On 21.5.2001, since Samir did not agree to a time-frame, CLB decided to fix a time-frame itself.

14. On 1.6.2001, Samir filed CA No.114/01 for recall of order dated 21.5.2001 claiming that "U.K. Shah group would have to pay for its personal liabilities" and enclosing the table alleged liabilities under the caption "personal liabilities of KH Shah Group".

15. On 22.2.2002, the CLB passed on CA No.114/2001 an order holding that : (a) the price for shares was agreed only in the FSD and actually his offer was for implementation of the FSD in full, (b) the shares of the firms were included in his offer, and (c) the personal liabilities of the CLB-petitioners were to be adjusted against the price.

. The CLB directed that if by 10.3.2002, Unmesh and his mother express willingness of implementation of the FSD, including adjustment of their personal liabilities in the companies and firms against the amounts to be paid by Samir, then the parties will be bound by the offer/acceptance/CLB's order for the purchase of shares and there shall be no hearing of the matter on merits.

16. On 5.3.2002, accordingly, the willingness was conveyed by Unmesh and consequently CLB's orders for purchase of shares became final and binding.

17. On 9.4.2002, Unmesh filed CA No.71/2002 for consequential payments by Samir. On 10.11.2002 Samir retaliated by purporting to terminate the FSD itself. On 13.12.2002, after hearing the parties, CLB passed an order holding that the subsequent termination of FSD by Samir was an attempt to wriggle out of the commitment given across the bar, which cannot be permitted. The CLB directed that:- (i) Rs.2.6 crores be paid by; him to Unmesh within 5.3.2003; (ii) Rs.4.4 crores be paid by him within 5.3.2004 subject to verification of personal liabilities of Unmesh and the mother by an independent person as the Verifying Authority. On 9.1.2003 Samir filed Appeal No.1/2003 under S.10F only against CLB's consequential order dated 13.12.2002 before the High Court, Bombay. The learned Single Judge of the High Court held that there is no justification in imposing on the petitioners liabilities of the father and other members of the family and that the CLB's main order dated 22.2.2002 in this regard has never been challenged and has become final and binding on the parties. Accordingly, the SJ dismissed Samir's Appeal No.1/2003 against CLB's consequential order dated 13.12.2002.

18. On 10.1.2003, both the parties apprised the CLB of the learned Single Judge's order and willingly sought time to submit lists of persons for appointment as

Verifying Authority by 17.1.2003.

19. On 17.1.2003, both the parties also submitted list of retired High Court Judges/Chartered Accountants to the CLB for appointment as Verifying Authority.

20. On 27.1.2003, CLB appointed Justice D.R.Dhanuka (Retired) from the list of Unmesh assisted by Mr.Anil Sathe, C.A. from the list of Samir, as the verifying Authority and held that the verifying Authority's report shall be final and binding on the parties.

21. On 3.2.2003 Appeal No.160/2003 was filed by Samir before the Division Bench (D.B.) against the Single Judge's Order dated 9.1.2003.

22. As alleged, on 5.3.2003 interest on Rs.2.5 crores became payable as per CLB order dated 13.12.2002 and 15.7.2003.

23. On 27.3.2003 the Division Bench dismissed the Appeal No.160/2003 holding that the CLB passed orders from time to time covering the entire dispute between the parties arising out of the Family Settlement and the subsequent conduct, participation, etc. of Samir in the CLB proceedings for appointment of the Verifying Authority also disentitled him from canvassing that the

impugned orders of the CLB and Single Judge are bad.

24. On 10.5.2003, SLP before Supreme Court against D.B. Order dated 27.3.2003. On 14.5.2003 CLB appointed Justice Jhunjhunuwala (Retired) as the verifying Authority while maintaining all other terms of order dated 27.3.2003. On 15.7.2003 pending SLP before the Hon'ble Supreme Court, CLB directed Samir to make payment by 10.8.2003.

25. On 14.8.2003, the petitioners filed C.A.No.170/2003 under Section 634A for execution of CLB's order dated 15.7.2003.

26. On 29.8.2003, the CLB restrained respondents from alienating immoveable properties, etc.

27. On 27.1.2004, the Verifying Authority made its report identifying 3 out of 10 claims aggregating to Rs.32,06,330.16 made by Samir to be the "personal Liabilities" of Unmesh. Accordingly, out of the total claim of Rs.2.73 crores, only a sum of Rs.32,06,330.16 was held to be the personal liabilities of Unmesh. Hence, even adjusting Rs.32 lakhs and odd against the dues of Rs.6,90 crores, still a sum of Rs.6.58 crores remains outstanding in spite of expiry of both the dates viz. 5.3.2003 and 5.3.2004. Meanwhile, in the

execution proceedings under Section 634A before the CLB, Samir continued to take adjournments on account of the pendency of the matter in the Supreme Court.

28. On 30.1.2004, the Supreme Court in Samir's SLP No.7674/03, granted a liberty to bring on record the Report of the verifying Authority and was accordingly brought on record.

29. On 19.3.2004, the Supreme Court dismissed Samir's SLP No.7674/03 subject to the observation that if the CLB feel that for an effective adjudication of the controversy before it, Kantilal H. Shah is required to be joined as a party to the proceedings, the CLB shall be at liberty to do so.

30. On 1.3.2004, Samir filed CA No.74/2004 for impleading K.H.Shah as party.

31. On 5.3.2004, Rs.4,07,93,669.84 ought to have been paid as per CLB order dated 13.12.2002.

32. On 5.4.2004, Unmesh filed CA No.89/2004 for payment of amount due with interest.

33. On 21.4.2004, the CLB passed an order directing Samir to pay Rs.2.5 crores to Unmesh latest by 10.6.2004

and only where upon his CA No.74/2004 will be heard.

34. On 8.6.2004, Samir filed an Appeal under 10F against Order dated 21.4.2004, which was withdrawn on 9.7.2004.

35. On 8.7.2004, in view of the petitioners' letter dated 6.7.2004 to save time and avoid delay, Shri K.H.Shah offered himself and was added as a party for limited purpose of effective adjudication of controversy, if any, between the petitioners and the respondents and filed his affidavit dated 7.7.2004 and the CLB passed order accordingly.

36. On 9.7.2004, an order passed by Mr.Justice J.N.Patel in Company Appeal (L) No.3/2006 and kept all contentions open.

37. On 13.8.2004, Samir filed 4 applications viz. CA No.216/2004 (for referring the matter to arbitration); CA No.217/2004 (for recalling of all interim orders by CLB); CA No.218/2004 (for claim for damages) and CA No.219/204 (for verification of personal liabilities of Shri K.H.Shah).

38. On 30.8.2004, CLB passed an order dismissing all 4 CA filed by Samir, interalia, holding that the joining

of Shri K.H. Shah does not call for review of the finding dated 13.12.2002 of CLB which has reached a finality by dismissal of appeals by the High Court and the Supreme Court. And directing the respondents to make payment of the entire amount due i.e. Rs.6,57,93,669.84 by 31.10.2004.

39. On 21.10.2004, instead of complying with the solemn directions for payment of the entire amount due to the petitioners, Samir filed 4 Appeals challenging the common order passed by CLB on 30.8.2004.

40. On 27.10.2004, Samir served the notice of his intention to make application before the High Court, on 29.10.2004 for stay of the operation of the CLB order dated 30.8.2004.

41. On 28.10.2004, Samir's Advocate sent telegram to Unmesh intimating that no application will be made on 29.10.2004 and till date no application is made by Samir for stay of the said order.

42. On 7.1.2005, CLB heard petitioners C.A.Nos.170/2003 and 89/2004.

43. On 29.3.2005, CLB directed the parties to submit the names of appropriate persons to sell the Company's

properties.

44. On 4.4.2005, CLB passed an order appointing Mr.Justice S.P.Kurdukar, a retired Judge of the Supreme Court as Executing Authority to dispose of the respondents' assets/properties.

45. On 16.5.2005, respondents filed an Appeal (Lodging) No.10 of 2005 before this Court against an order dated 4.4.2005.

46. On 23.6.2005, order passed by Khanwilkar J. setting aside the order dated 4.4.2005 and remanded C.A.Nos.170/2003 and 89/2004 to CLB.

47. On 3.8.2005, appellants filed C.A.No.189/2005 for appointment of a Special Officer, as a Receiver to execute the orders dated 13.12.2002 and 15.7.2003 passed by CLB.

48. On 17.10.2005, the CLB passed an order on C.A.Nos.170/2003, 89/2004 and 189/2005, holding that the respondents are liable to pay to the appellants a sum of Rs.6,57,93,669.84 and that the said order be sent to this Court for execution.

49. On 20.10.2005, the CLB forwarded with its letter,

the order dated 17.10.2005 for execution.

50. On 3.2.2005, a Warrant of Attachment issued by this Court for attachment of all moveable and immoveable properties of the respondents.

51. On 23.2.2005, the Warrant of Attachment executed, interalia, by attaching moveable and immoveable properties of Chemosyn and Metacin Brand.

52. On 18.1.2006, Unmesh filed an Appeal (L) No.3/2006 for grant of interest.

53. On 17.5.2006, Consent Order passed by the CLB, disposing of the C.P. No.73 of 2000 and all applications/proceedings pending before CLB, but without prejudice to the other legal proceedings pending between the parties.

54. On 19.5.2006 Samir issued 4 cheques for the aggregate sum of Rs.6,57,93,669.84 and the same were encashed by Unmesh and his family members on 19.5.2006.

55. In view of above background, all these appeals are connected and arising out of the above common facts and circumstances and it is between the same parties and connected parties. Therefore, all these appeals are

disposed of by this common order.

56. Admittedly, by an order dated 17.5.2006 CLB has disposed of the main Company Petition No.73/2000 and all applications and proceedings pending before the CLB, but as alleged without prejudice to the "other legal proceedings" pending between the parties. For convenience, the following are the relevant clauses of the said order:

> "2. During the pendency of the execution proceedings, the Respondents have filed the above application stating that they are ready and willing to make the payment of decretal amount to the petitioners and their group and upon such payment this Board may declare that the orders of this Board have been fully complied with and that all orders of stay/restrain/attachment passed by this Board may be recalled.
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> 10. The Respondents and SK Shah Group hereby agree, declare and confirm that neither they nor any of the Companies/Firms listed in the Deed, have any outstanding claim or demand of any nature whatsoever against the Petitioners and Group under the Deed and vice versa. The said agreement, declaration and confirmation is recorded.
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> 13. Upon the encashment of all the cheques referred to in paragraph 6 above, it is declared the orders of this Board have been fully complied with and the orders dated 28.09.2000, 29.08.2003 and 17.10.2005 passed by this Board shall stand recalled.
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> 14. Upon realization of the cheques referred in paragraph 6 above, the petitioners are directed to withdraw their execution application pending in the Bombay High Court.
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> 15. The Company Petition, CP No.73 of 2000 and all Applications/Proceedings therein stand

finally disposed, in terms of this order.

16. Both the Counsels have agreed to the terms contained in the order, without prejudice to other legal proceedings pending against each other."

57. In view of above clause 13, the orders dated 28.09.2000, 29.08.2003 and 17.10.2005 also stood recalled, apart from final disposal of the main Company Petition No.73/2000 and all applications and proceedings pending then.

58. The respondents in the above Company Appeal Nos.31/2005 to 34/2005 hereinafter referred to as "the UK Shah Group" are the appellants in Company Appeal (Lodging) No.3/2006. The appellants in appeals are the S.K.Shah Group.

59. In view of this undisputed position on record, the Appeal Nos. 31/2005 to 34/2005 filed by SK Shah Group arising from four applications filed before CLB (i) C.A. No.216/2004 for referring the matter to Arbtiration; (ii) CA No.217/2004 for recalling of all interim orders; (iii) CA No.218/2004 for claim for damages and (iv) CA No.219/2004 for verification of personal liabilities of Shri K.H. Shah, all these were pending on the date of order dated 17.5.2006, do not survives and become infructuous.

60. Both the parties consented to settle their dispute based upon the Consent Order dated 17.5.2006 was passed. All other orders including the order dated 17.10.2005 also stood recalled. In totality, therefore, on 17.5.2006 even the Company Petition No.73/2000 in which all these applications were made also disposed of. The learned senior counsel for the appellants, therefore, fairly not pressed the two Appeals bearing Nos. 32/2005 and 33/2005. In so far as the other appeals are concerned, I am of the view that those appeals have also become infructuous for the above facts and reasons. The submission is that the words and/or the expression "other legal proceedings" was never intended to refer such meaningless and infructuous legal proceedings as the above four appeals of the SK Shah Group were also pending. Admittedly, all those proceedings became covered and disposed of in view of the above agreed order. The exception was only to the unconnected Suit or legal proceedings which are alien to the Family Settlement Deed (FSD). Therefore, except all those unconnected Suits or legal proceedings all connected matters arising out of FSD and Company Petition No.73/2000 have been disposed of. This also includes the above appeals filed by SK Shah Group and also the Company Appeal(Lodging) No.3/2006 filed by UK Shah & ors. In view of this, Company Appeal Nos. 31/2005 to 34/2005 filed by SK Shah Groups are dismissed as

infructuous.

61. The whole dispute between the parties revolve around the FSD dated 12.10.1999. The parties have ultimately, as reflected above in the events, agreed for Consent Order with intention to implement and carry out their obligation submitted to the orders dated 17.5.2006 as recorded above.

62. The learned Senior Counsel for the S.K. Shah group submitted and also pointed out from the Memo of Appeal that the said Appeal is not directed against the order dated 17.10.2005 fully, but the challenge is only in reference to the non-grant of interest which is left out in the order dated 17.10.2005. The Memo of Appeal reflects that "the Appeal under section 10F of the Companies Act" is directed against the non-award of interest by Hon'ble Company Law Board (CLB) on a sum of Rs.6,57,93,669.84ps.

63. Admittedly, in pursuance to clause 13 of the Consent Order dated 17.5.2006 the order dated 17.10.2005 which is the subject matter of the Company Appeal (Lodging) No.3/2006 was also recalled in view of the compromise and consensus reached between the parties for payment of principal decretal amount as it was admittedly filed pending the execution proceedings

initiated by the CLB in the Bombay High Court for recovery of the amount from the SK Shah Group although SK Shah Group had paid the principal/decretal amount due to UK Shah Group.

64. Admittedly, UK Shah Group have filed an application for execution under Section 634A of the Companies Act of CLB's order dated 15.7.2003. The four applications filed by the SK Shah Group dated 13.8.2004 as referred above were also dismissed on 30.8.2004. They have preferred above four Appeals challenging the Common Order dated 21.10.2004. On 17.10.2005 the CLB passed an order on C.A.No.170/2003, 89/2004 and 189/2005 holding SK Shah Group to pay the appellant UK Shah Group the abovereferred sum and the said order was sent to this High Court for execution. The warrant of attachment was issued by this Court some time in February 2005. Therefore, UK Shah Group on 18.1.2006, as there was no interest amount mentioned, preferred Company Appeal (Lodging) No.3/2006 and thereafter as noted on 17.5.2006 Consent Order has been passed by the CLB disposing of Company Petition No.73/2000 and all applications and proceedings pending before the CLB also disposed of accordingly without prejudice to the other legal proceedings pending between the parties.

65. The learned senior counsel for the appellants-UK

Shah Group submitted that in view of this, the appeals filed by SK Shah Group became infructuous. However, the learned senior counsel submitted that the Company Appeal (Lodging) No.3/2006 filed by UK Shah Group as challenged on the non-award of interest, however, protected and/or saved. I am not inclined to accept this submission in view of the reasoning given above and also in view of the dismissal of the appeals by this order filed by SK Shah Group as noted above.

66. First of all, on the same reason, that in pursuance to clause 13, the order dated 17.10.2005 has been recalled. Therefore, there is no order of 17.10.2005 in existence. Therefore, there is no question of challenge of any sort can be raised against the order which is not in existence.

67. Admittedly, by the Consent Order dated 17.5.2006 main Company Petition No.73/2000 itself disposed of along with all applications therein. The claim of interest as raised, therefore, is an application connected and/or arising out of the said Company Petition No.73/2000 and also arising out of the FSD dated 12.10.1999. Therefore, in view of the said consent order, I am of the view that there is no challenge whatsoever can be raised and/or permitted to any of the parties to reagitate the same by taking the

shelter of expression "other legal proceedings". Admittedly, both the parties have actually acted upon the Consent Order dated 17.5.2006. Admittedly, there is no challenge raised of whatsoever nature against the said order. Admittedly, there is no clarification and/or review filed against the order dated 17.5.2006. In the result, till this date the said Consent Order remained final and binding upon the said parties.

68. The learned senior counsel for SK Shah Group (appellant in Company Appeal (Lodging) No.3/2006) further submitted that the basic principle of interpretation of contract need to be taken note of while interpreting the Consent Order in question being an order in the nature of a contract. He has strongly relied on the following authorities:

(1) (1990) 1 SCC 731, Bihar State Electricity Board vs. Green Rubber Industry.

(2) (2007) 1 SCC 571, Commissioner of I.T., Kolkata vs. Hoogly Mills Ltd.

(3) AIR 1966 SC 353, Gopisetti Venkatranam vs. Vijaywada Municipality.

(4) (1998) 7 SCC 348, LIC of India vs. Dharam Vir Anand.

69. The law with regard to the interpretation of consent decree is elaborated by Supreme Court in **2007 (12) S.C. 355, Parayya Allayya Hittalamani Vs. Sri Parayya Gurulingayya Poojari & Ors.**. The relevant paras

are as under:-

> 14. A consent decree, as is well known, is a contract between the parties with the seal of the Court superadded to it. (see **Baldevdas Shivlal & Anr. Vs. Filmistan Distributors (India) P. Ltd. & Ors. and Hindustan Motors Ltd. V. Amritpal Singh Nayar & Anr. (1969(2) SCC 201, 100 (2002) DLT 278).**
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> 15. We are, however, not oblivious of the fact that such consent decree may operate as an estoppel. (see **Sailendra Narayan Bhanja Deo Vs. The State of Orissa) (AIR 1956 SC 346.)**
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> 16. It is equally well settled that which construing a decree, the court can and in appropriate case ought to take into consideration the pleadings as well as the proceedings leading upto the decree. In order to find out the meaning of the words employed in a decree, the Court has to ascertain the circumstances under which these words came to be used. (See **Bhavan Vaja & Ors. Vs. Solanki Hanuji Khodaji Mansang & Anr. (AIR 1972 SC 1371)**
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> 17. It is now also a trite law that in the event the document is vague, the same must be construed having regard to surroundings and/or attending circumstances.

70. Above citations need to be considered in the facts and circumstances of the case. The consent order in question passed by the Tribunal is binding. Whatever the agreed terms as recorded now culminated into the order. It also covers the pending issues and orders. The rival submissions are self destructive. It is Tribunal's order passed upon the agreement between the parties, now become the final order of the Court. The Tribunal, after considering the rival submissions

including their agreements, recorded the reasoning and dealt with various aspects on merits and also disposed of the Company Petition as well as all proceedings arising out of the same. The CLB has also re-called the earlier orders as referred in the clause. The parties have in fact, as recorded, appeared and acted upon the same as there is no challenge about the non-receipt and/or non-payment of the principal amount even by the UK Shah Group. The Consent Order being acted upon by all the parties, the submission as raised in the Company Appeals is therefore untenable and impermissible.

71. The submission that the other proceedings as referred in the Consent Order save the Company Appeal (Lodging) No.3/2006 as contended by the learned senior counsel for UK Shah Group, in my view is not correct. The plain reading of the order shows that all matters arising out of Company Petition No.73/2000 have been settled and disposed of. Any other matters unconnected with the said Company Petition No.73/2000 and/or FSD between the parties are only protected. At the bar, a statement has been made that there are two other proceedings which are pending not connected and/or arising out of these proceedings. The conduct of the parties soon thereafter is very important. The said consent order has attained the finality.

72. The intention of the parties, need to be considered by reading the whole of the consent order and not isolated sections or clauses. (**(2004) 1 S.C.C. 483, Rekha Mukherjee Vs. Ashish Kumar Das and anr.**). An order of Court particularly a consent order must be read in its entirety to ascertain its true intent and purport. The Supreme Court in **(2006) 1 Supreme Court Cases 502, N.K. Rajgarhia Vs. Mahavir Plantation Ltd. & ors.** observed as under:-

> . "True the court would not rewrite a contract between the parties but the court would relieve against a forfeiture clause; and, where the contract of the parties had merged in the order of the court, the court's freedom to act to further the ends of justice would surely not stand curtailed."

73. I am dealing with the unchallenged consent order in question, and not the interpretation of an agreement or contract between the parties. Both the parties have agreed for the consent order and acted accordingly. There is no question now rewriting or reviewing or clarifying the consent order. The order is final and binding. Therefore there is no question of re-opening or re-agitating any issues, after the consent order.

74. Taking all this into account, in the facts and circumstances of the case, the principle of interpretation of contract and/or any documents cannot be extended to the interpretation and/or for

clarification of unchallenged Consent Order passed by the CLB in question to consider these appeals on merits, arising out of the interlocutory petition/ application and order passed thereon, prior to the consent order in question, inspite of the final decision of the main company petition itself.

75. The scope of Appeal under Section 10-F of the Companies Act is very restricted. There is no question of law involved. There cannot be any perversity in such impugned orders in view of the consent order in question.

76. Having once accepted and acted upon the consent orders, any challenge arising out of the proceedings of Company Petition No.73/2000 and/or FSD between the parties is impermissible to any of the parties.

77. Resultantly, all these Appeals are dismissed with no order as to costs.

[ANOOP V. MOHTA,J.]